

## NOTICES OF RULEMAKING DOCKET OPENING

The Administrative Procedure Act (APA) requires the publication of Notices of Rulemaking Docket Opening whenever an agency opens a rulemaking docket to consider rulemaking. Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process.

### NOTICE OF RULEMAKING DOCKET OPENING

#### DEPARTMENT OF HEALTH SERVICES - LABORATORIES

- 1. Title and its heading:** 9, Health Services

**Chapter and its heading:** 14, Department of Health Services

**Articles and their heading:** 4, Determination of Alcohol Concentration

**Section numbers:** R9-14-401 through R9-14-415 and Exhibits A through Z  
(The Department may add, delete, or modify additional Sections or Exhibits as necessary.)
- 2. The subject matter of the proposed rule:**

The proposed rulemaking will delete all of the Sections within the Article and replace them with new Sections that will update the program, reorganize the rules, clarify the rules, conform to rulemaking format and style requirements, and conform to statutory authority and the Administrative Procedure Act. The rules will clarify that the Article does not apply to the analysis of blood-alcohol concentration for medical purposes, will eliminate the use of enzymatic analysis with qualitative screening for blood analysis, will change the analyst permit term from 1 year with renewal to indefinite with annual proficiency testing as a condition for retention, and will change the minimum qualifications for an analyst permit so that they are more consistent with law enforcement and laboratory practice. The Department may also eliminate the requirement that analysts maintain a quality assurance program.

The rules will update the quantitative breath-testing devices and the quantitative preliminary breath-testing devices approved by the Director, will add a Director approval process for quantitative preliminary breath-testing devices, may allow concurrent calibration checks performed as part of the standard operating procedure for the Intoxilyzer Model 5000 and the Intoxilyzer Model 5000EN to replace 31-day calibration checks, and will increase the exam scores needed to obtain a class I operator permit or an instructor approval.

In addition, the new rules will repeal Exhibits A through D and replace them with narrative language within the rules and will repeal or renumber and amend the remaining Exhibits. The Department may add, delete, or modify additional Sections or Exhibits as necessary.

**The agency docket number:** RE-005-00
- 3. A citation to all published notices relating to the proceeding:**

None
- 4. The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	James Farrell
Address:	Arizona Department of Health Services Office of Laboratory Licensure 3443 N. Central Avenue, Suite 810 Phoenix, Arizona 85012
Telephone:	(602) 255-3454
Fax:	(602) 255-3462
E-mail:	jfarrel@hs.state.az.us
OR	
Name:	Kathleen Phillips, Rules Administrator
Address:	Arizona Department of Health Services 1740 W. Adams, Room 102 Phoenix, Arizona 85007

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Telephone: (602) 542-1264  
Fax: (602) 542-1090  
E-mail: kphilli@hs.state.az.us

**5. The time during which the agency will accept written comments and the time and place where oral comments may be made:**

The Department will accept written comments until the close of record, which has not yet been determined. The Department has not scheduled any oral proceedings at this time.

**6. A timetable for agency decisions or other action on the proceeding, if known:**

None